

April 22, 2024
Sl. No.23
Court No.19
s.biswas

CO 674 of 2024

Sri Sasabindu Prodhan and others

vs.

Sri Manoj Kumar Bag

Mr. Sadananda Ganguly

Mr. Sukanta Das

... for the petitioners

Mr. Gopal Ch. Ghosh

Mr. Sayan Sengupta

... for the opposite party

1. The revisional application arises out of an order dated January 30, 2024 passed by the learned Additional District Judge, 4th Court, Tamluk, Purba Medinipur in Title Appeal No.27 of 2022. The appeal arose out of judgment and decree passed by the learned Civil Judge (Junior Division), 2nd Court, Tamluk in Title Suit No.09 of 2017.
2. It appears that the learned appellate court rejected the application for stay of operation of the judgment and decree passed in the title suit on the ground that one application with two composite prayers – one for stay of the operation of the judgment and decree and the other for ad interim order of injunction could not be entertained by the learned court.
3. Mr. Ganguly, learned advocate for the petitioners submits that the appeal will become infructuous if the judgment and decree is not stayed. According to Mr. Ganguly, on the basis of such

judgment and decree, the plaintiff opposite party has been pursuing his remedy in a preemption case. If the preemption case continues before the appeal is disposed of and is decided finally, the situation would become irreversible.

4. Mr. Ghosh, learned advocate for the opposite party/plaintiff submits that the judgment and decree has not been put into execution. It was a declaratory decree and could not be executed through court. On the basis of the judgment and decree, the plaintiff proceeded with the preemption case as per liberty granted by a Co-ordinate Bench of this court. If the judgment and decree is now stayed, the preemption proceedings will suffer.
5. Mr. Ghosh further submits that the judgment and decree has gone against the petitioners and the learned court held that the transaction between the petitioners, was a fraudulent one. It is further contended that the appeal is at an advanced stage and no prejudice would be caused to the petitioners, especially because the petitioner no.1 claims to be in possession of the property.
6. Having heard the rival contentions of the parties, this court is of the view that the judgment and decree appealed from should not be given effect

to till the title appeal is decided, or else, apart from the title appeal being rendered infructuous, the situation would become irreversible, in case the preemption application is allowed in the meantime. This will lead to multiplicity of the proceedings.

7. Under such circumstances, the revisional application is disposed of with a modification to the order impugned to the extent that the learned appellate court shall dispose of the appeal within three months from date. In the meantime, the petitioners shall be at liberty to pray for adjournment of the preemption application till the appeal is disposed of.
8. As the fate of the preemption case and/or disposal of the preemption case would depend on the disposal of the appeal, this court requests the learned appellate court to dispose of the Title Appeal No.27 of 2022 within the time fixed by this court.
9. The revisional application stands disposed of accordingly.
10. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)

